IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

PUBLIC INTEREST LITIGATION NO. 143 OF 2007

Sanjay Digambar Balgude ... Petitioner

V/s.

1. Pune Municipal Corporation

2. The Municipal Commissioner ... Respondents
Pune Municipal Corporation

3. The Chief Engineer
Pune Municipal Corporation

4. The Secretary, Executive Committee
3rd Commonwealth Youth Games, 2008 and
the Director, Sports and Youth Service
Maharashtra State

5. Unity Infra Projects Limited

6. Shashi Prabhu and Associates

7. Shri C.K. Anil, IAS

8. State of Maharashtra

9. The Collector, Pune ... Respondents

Mr. A.V. Anturkar, Senior Advocate, with Mr. S. Pathak i/by
Mr. S.B. Deshmukh for the Petitioner

Mr. R.G. Ketkar for Respondents No. 1 to 3

Mr. Y.S. Jahagirdar, Senior Advocate, with Mr. S.R. Nargolkar,

Assistant Government Pleader, for Respondent No. 4

Mr. K.K. Singhvi, Senior Advocate, i/by M/s. Kadam & Co.
for Respondent No. 5

Mr. R.M. Vasudeo for Respondent No. 6

Mr. R.M. Kadam, Advocate General, with Mr. S.R. Nargolkar,
Assistant Government Pleader, for Respondents No. 7 and 8.

CORAM: **J.N. PATEL AND**
A.A. SAYED, JJ.
DATE: **NOVEMBER 2, 2007**

P.C. (Per J.N. Patel, J.):-

1. Heard.

2. This petition is filed in public interest, impugning the decision of the State, particularly respondent No. 4 and respondent No. 8, through the Department of Sports and Youth Welfare, relating to a contract assigned to respondent No. 5, for which respondent No. 6 has been nominated as an Architect and Consultant.

3. This contract awarded to respondents No. 5 and 6 has

been on B.O.T. basis at Shri Chatrapati Sports Complex, Balewadi, Pune.

4. The public interest litigation mainly raises two issues: firstly, that the construction undertaken by respondents No. 5 and 6 is being undertaken without any sanction, and, therefore, it is unauthorized and illegal; and secondly, that the appointment of M/s. Shashi Prabhu and Associates, Architects, for the said project is a case of favouritism and, therefore, this Court should restrain respondents No. 5 and 6 from carrying on any construction of the commercial complex, which includes a 3 star hotel-cum-hostel in Survey No. 26/1B, Shri Chatrapati Sports Complex, Balewadi, Pune, which has been reported to be undertaken for the Commonwealth Youth Games that is going to be held in Pune City somewhere in October, 2008.

5. We have heard the learned counsel for the parties at length.

6. Initially when the matter was taken up for admission on 27th September, 2007, it was pointed out to this Court that the

proposal of respondent No. 5 for construction of hotel on Shri Chatrapati Sports Complex, Balewadi, Pune, does not have the necessary sanction from the local Planning Authority, i.e., the Municipal Corporation of Pune; and as there was no proper sanction and in spite of the fact that stop-work notice was issued by the local Planning Authority on 1st September, 2007 to respondent No. 8, i.e., the Director of Games, Sports and Youth Services of the State of Maharashtra, this Court has *prima facie* found that the petitioner was right in agitating the issue, and observed in its order that unless an approval of the proposal by the State Government under Section 58 of the Maharashtra Regional and Town Planning Act, 1966 (hereinafter, for short, "the Act") is obtained, respondents No. 5 and 6 should not proceed further with the construction, and the matter was adjourned. Subsequently, the respondent-State placed before us an order dated 15th October, 2007 passed by the Urban Development Department, Mantralaya, Mumbai, addressed to the Municipal Commissioner, Municipal Corporation of Pune, wherein the State, in exercise of its power under Section 58 of the Act, accorded sanction to the Directorate of Sports and Youth Services to go ahead with the

commercial exploitation of part of the land, i.e., out of Survey No. 26, Balewadi, admeasuring 24685 square metres as per the project awarded to respondent No. 5 under the supervision of respondent No. 6.

7. This Court has heard the learned counsel appearing for the parties. Upon hearing the parties, it was noted by this Court that the communication to the Municipal Commissioner of Pune Municipal Corporation is in the nature of direction that he should accord sanction to the Director of Sports and Youth Services, as objections raised by the Planning Authority were over-ruled by the State Government by invoking the powers vested under Section 58 of the Act. The learned Advocate General submitted that it is only a matter of formality, and probably, there is an error in the operative part of the order and that the State Government will issue a corrigendum rectifying the same. Subsequently,on 1st November, 2007, the State Government accorded sanction by issuing a corrigendum to that effect.

8. Though several issues were raised before us in the petition, this Court is conscious of its jurisdiction while dealing with

matters of public interest, and it is settled law and well-known principle, which is consistently guiding the Court. To quote from the decision of the Hon'ble Supreme Court rendered in the case of *G.B. Mahajan and Others v. the Jalgaon Municipal Council and Others* [AIR 1991 S.C. 1153]:-

> "In regard to Courts and policy we might recall the following words of a learned author:
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> "The Courts are kept out of the lush field of administrative policy, except when policy is inconsistent with the express or implied provisions of a statute which creates the power to which the policy relates or when a decision made in purported exercise of a power is such that a repository of the power, acting reasonably and in good faith, could not have made it. In the latter case, 'something overwhelming' must appear before the Court will intervene. That is, and ought to be, a difficult onus for an applicant to discharge. The Courts are not very good at formulating or evaluating policy. Sometimes when the Courts have intervened on policy grounds, the Courts' view of the range of policies open under the statute or of what is unreasonable policy has not won public acceptance. On the contrary, curial views of policy have been subjected to stringent criticism. In the world of politics, the Courts' opinions on policy are naturally less likely to reflect the popular view than the policies of a democratically elected Government or of expert administrators.....
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> The considerations by reference to which the reasonableness of a policy may be determined are rarely judicially manageable.....
>
> (Emphasis supplied)

[See: "The Purpose and Scope of Judicial Review" -- by Sir Gerard Brennan in "Judicial Review of Administrative Action in the 1980s" Oxford University Press.]"

9. In the subject-matter at hand, respondents No. 5 and 6, at the behest of respondent No. 8 as Director of Sports and Youth Services, took up the construction of the project without obtaining prior sanction. Though Mr. Singhvi, the learned Senior Advocate appearing for respondent No. 5, submitted that the State, when undertakes any construction for its own purposes, is not bound by the usual formalities of obtaining sanctions, and it has plenary powers under Section 58 of the Act to permit change in the user of the land as proposed in the Development Plan, and undertakes any construction for the purpose of one of its Departments and in the present case, it being the Department of Sports and Youth Welfare. This was strongly refuted by the learned counsel for the petitioner, and submitted that he would have otherwise not come to this Court if the proposed project was for the purpose of the Director of Sports and Youth Services; but one can very well read between the lines that the project has been carved out to

benefit vested interests, and it is a facade. He strenuously argued that though the State Government may claim to have plenary powers under the Act, still it cannot act contrary to what the Legislature has prescribed; and therefore, the contract undertaken by respondent No. 5 then at the behest of respondent No. 8 through the Director of Sports and Youth Services cannot go ahead, unless it complied with all the requirements of the Act.

10. It has been emphasised before us that this project was required to be undertaken to meet the needs of holding of the Commonwealth Youth Games under the Director of Sports and Youth Services; and the project has to be completed within a time-bound programme; and therefore, the requirements of law of obtaining a proper sanction in the change of user of the land from what it was notified in the Regional Plan or the Development Plan submitted by the Corporation can be taken care of subsequently. We do not accept such a proposition, and expect that at least the State, particularly the Executive, is bound by the legislation in the field, and in order to keep the rule of law, should adhere to the compliance of all requirements.

11. This Court appreciates the stand taken by the then Commissioner in rejecting the proposal submitted by respondent No. 8 to the Director of Sports and Youth Services, as it was not in consonance with the land use; and in the opinion of the Director of Town Planning, it was a substantial change, which could have been only done by the State Government by modifying the Regional Plan / Development Plan submitted by the Municipal Corporation.

12. But for the intervention of the petitioner by this public interest litigation, probably, the officers of the State would have taken for granted that they could act in any manner and in utter violation of the law governing the subject. We fail to understand that if the exigencies were such that the project is required to be completed within a time-bound framework, so as to facilitate the Department of Sports and Youth Welfare to hold the Commonwealth Youth Games, then why the authorities did not act in accordance with law which has factually put the Executive in an embarrassing position as violaters of the rule of law and such plenary powers do not stand vested in them except in case Emergency is declared and that, too, subject to the rigour of the

Constitution of India.

13. This Court, out of anxiety, made a specific query to Mr. Y.S. Jahagirdar, learned Senior Advocate appearing for the Director, Sports and Youth Welfare, whether the Directorate, at the time of bidding to hold the Commonwealth Youth Games, assessed for itself that it had the required infrastructure, and then proceeded to take the responsibility of holding the Commonwealth Youth Games or it was subsequently realised that the said commercial project is required to be accorded sanction on a priority basis so as to meet the requirements of accommodation to the participants of the the Commonwealth Youth Games, who expect that their lodging and boarding would be of certain minimum standard. On taking instructions from the Director, Sports and Youth Welfare, who is present in the Court, the learned Senior Advocate stated that this was a subsequent decision, as the authorities felt that it will not be possible to go ahead with the Commonwealth Youth Games for want of infrastructure. This only reflects how the Directorate of Sports and Youth Welfare is functioning, particularly when they have taken the responsibility of hosting the Commonwealth Youth Games, which is undoubtedly an

event of international importance. They have not done their homework, which shows their lack of vision, and this Court expects that in future, they would be well prepared before they take up such responsibility.

14. Insofar as the allegations made by the petitioner in respect of respondent No. 6 is concerned, we are informed that respondent No. 6 was selected by the Committee after inviting Expression of Interest, and was found most suitable. Well, that is a matter of internal affair, and there is no reason to infer that the State would not take into consideration its responsibility by appointing a competent person for such a big project. A letter from the Director of Sports and Youth Welfare has been placed on record to show that the past record of respondent No. 6 does not speak well of its credentials. We are informed that the officer, who was the author of this letter, was a member of the Committee, who approved the appointment of respondent No. 6, and stands transferred to Bihar. Though he is made respondent No. 7, he has not chosen to represent himself in the matter.

15. To conclude, we find that now the Government having exercised their power under Section 58 of the Act and accorded

sanction to the project, there is no reason why this Court should interfere in the matter, and examine other ancillary issues which are not material in this public interest litigation. Further, Mr. Singhvi, learned Senior Advocate appearing for respondent No.5, has made a statement, after taking instructions from his client, that respondent No. 5 would carry out the project in accordance with the sanction, which clearly states that the State has accorded sanction subject to all Building Bye-laws and Rules and Regulations, including F.S.I., which, according to Mr. Ketkar, learned counsel for respondents No. 1 to 3, in the area is 1.

16. Therefore, nothing remains in the petition, and the same is disposed of as infructuous.

J.N. PATEL, J.

A.A. SAYED, J.